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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 668

GIACOMO QUATTRONE,

Petitioner,

vs.

HENRY NICOLLS, District Director of Immigration and Naturalization,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Allan R. Rosenberg,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 668

GIACOMO QUATTRONE,

Petitioner,

vs.

HENRY NICOLLS, District Director of Immigration and Naturalization,

---

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the above entitled case on February 19, 1954.

Opinions Below

The memorandum opinion of the District Court (R. 11) is unreported. The opinion of the Court of Appeals (R. 102) is also unreported.

Jurisdiction

The judgment of the Court of Appeals was entered on February 19, 1954 (R. 111). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

Questions Presented

1. Whether Section 3(17) of the Internal Security Act of 1950, which makes the giving, loaning or promising of support or money or any other thing of value for any purpose to any organization a conclusive presumption of affiliation therewith, and a finding that the alien was affiliated with the Communist Party, based on Section 3(17) of that Act, violates petitioner's rights under the due process clause of the Fifth Amendment.

2. Whether Section 22 of the Internal Security Act of 1950 authorizes the deportation of petitioner as an alien affiliated with the Communist Party where there is no evidence and no administrative or judicial finding based on evidence in the record as to any act, doctrine, advocacy or belief of the Communist Party during the period in which petitioner is found to have been affiliated and no evidence that petitioner had any knowledge of any proscribed activity or advocacy by the Communist Party, where the only evidence in the record relating to advocacy or violence is that petitioner has never advocated the overthrow of the government of the United States by force or violence but believes in the right of the people to vote for a Socialist government if they choose, and where there is no evidence that petitioner knowingly did any act or contributed any money for or in connection with any proscribed activity of the Communist Party.

3. Whether Section 22 of the Internal Security Act of 1950 constitutes a bill of attainder or an *ex post facto* law in violation of Article I, Section 9, clause 3 of the Constitution.

4. Whether Section 22 of the Internal Security Act of 1950 deprives petitioner of the right to a fair hearing under the due process clause of the Fifth Amendment by substituting a legislative for a judicial determination as to the

proscribed activities of the Communist Party, during the period petitioner was found to have been affiliated with it.

5. Whether Section 22 of the Internal Security Act of 1950 imposes, without reasonable justification, restraints on petitioner's rights under the First Amendment.

Statute Involved

Internal Security Act of 1950, September 23, 1950, 64 Stat. 990, 1006 Title I, § 3. For the purpose of this title . . . (17). The giving, loaning or promising of support or of money or any other thing of value for any purpose to any organization shall be conclusively presumed to constitute affiliation therewith, but nothing in this paragraph shall be construed as an exclusive definition of affiliation . . .

§ 22. Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

• • • • • • •

2. Aliens who at any time shall be or shall have been members of any of the following classes:

• • • • • • •

(c) Aliens who are members of or affiliated with (i) the Communist Party of the United States . . .

4(a) Any alien who was at the time of entering the United States or has been at any time thereafter . . . a member of any one of the classes of aliens enumerated in Section 1(2) of this Act shall upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this Section shall be applicable to the classes of aliens mentioned in this Act irrespective of their time of entry into the United States.

Statement

Petitioner is an Italian national, sixty four years of age, who entered this country legally for permanent residence in 1906 and has resided here continuously since then (R. 30). He is married, has eight children born in the United States, but is legally separated from his wife (R. 31, 32). In 1942, he applied for citizenship but his petition has not been acted on (R. 30-31).

In January, 1950, petitioner was arrested on a warrant of deportation, charging him with being found in the United States in violation of Sec. 1 of the Act of October 16, 1918, as amended (40 Stat. 1012, as amended 8 U. S. C. (1946 ed.) 137), in that he was after entry (1) an alien who is affiliated with an organization that advises, advocates and teaches the overthrow by force and violence of the government of the United States and (2) an alien who is affiliated with an organization that writes, circulates, distributes, prints, publishes and displays any written and printed matter advising, advocating and teaching the overthrow by force and violence of the government of the United States (R. 59). He was at that time released on bond of $1,000 and remained free until his arrest for deportation on January 12, 1953 (R. 2-3).

On January 25, 1951, a deportation hearing was held before the Immigration and Naturalization Service in Boston, Massachusetts. At the conclusion of this hearing an additional charge was lodged against petitioner that he was "an alien who is affiliated with the Communist Party of the United States," (R. 43) under the Act of October 16, 1918, as amended (Internal Security Act of 1950, September 23, 1950, § 22, 64 Stat. 1006, 8 U. S. C. (1946 ed. Supp. IV, §§ 137, 137-3). After a further hearing on February 13, 1951, the Hearing Officer rendered his decision and ordered that the appellant be deported on the ground of the lodged charge

only "that he is found to have been after entry . . . an alien who is affiliated with the Communist Party of the United States" (R. 81, 85). There is no charge, no evidence, and no finding that petitioner is or ever was a member, or had sought to become a member of the Communist Party.

The only findings of fact made by the Hearing Officer as a basis for the conclusion of affiliation were the following:

> "(3) That the respondent has collected money from friends and has contributed this money to the Communist Party office at Boston, Massachusetts.
>
> (4) That the amount of money so contributed is unknown.
>
> (5) That the respondent has at least once a year since 1930 made such contributions.
>
> (6) That the respondent each week receives five copies of the 'Sunday Worker' a Communist Party publication, for which he personally pays and distributes them in the neighborhood free of charge." (R. 84-85)

On August 13, 1951, upon exception and a brief filed by petitioner, the decision and order of the Hearing Officer were affirmed by the Assistant Commissioner, Adjudications Division, Immigration and Naturalization Service (R. 91), who made the following additional finding of fact:

> "(7) That respondent has been affiliated with the Communist Party since 1930" (R. 92).

An appeal was dismissed by the Board of Immigration Appeals on April 11, 1952 (R. 97) on the basis of the record alone. Petitioner was arrested on a warrant of deportation issued and served January 12, 1952 (R. 2), taken into custody, and has been held without bail since that time.

The District Court Proceedings

On January 15, 1953, petitioner filed his application for writ of habeas corpus in the District Court for the District of Massachusetts (R. 1, 5, 7) alleging that the order and warrant of deportation were null and void, because, *inter alia,* the Service did not prove that he was or had been affiliated with the Communist Party or that if the Service did offer any proof to that effect, the proof was insufficient (See R. 7), and that the Internal Security Act of 1950, under which he was ordered deported, is unconstitutional and void as it applies to him in that it violated his rights of freedom of speech, press and assembly, is, in effect, a bill of attainder, and further that he has been denied due process.

On February 19, 1953, the District Court dismissed the petition for writ of *habeas corpus* and entered a memorandum and judgment. It held that the Internal Security Act was not unconstitutionally applied to petitioner by reason of its being a bill of attainder citing *Harasiades* v. *Shaughnessy,* 342 U. S. 580, as dispositive of the issue (R. 11-13). With respect to the finding of affiliation, the District Court held:

> "From a review of the entire file, I conclude that the findings of the hearing officer were adequately supported by the facts and there can be no doubt whatsoever that petitioner is affiliated with the Communist Party and that he has been affiliated with that Party since 1930" (R. 12).

Proceedings in the Court of Appeals

The Court of Appeals on February 19, 1954 entered judgment affirming the judgment of the District Court. On the basis of *Harasiades,* it held that petitioner's rights under the First Amendment and the *ex post facto* clause of Article I, Section 9 clause 3 of the Constitution were not vio-

lated. On the authority of that case, as well as *Carlson* v. *Landon,* 342 U. S. 535, 536, *Galvan* v. *Press,* 201 F. 2d 302 (9 Cir. 1953) cert. granted October 12, 1953, No. 407 this Term, and other cases in which administrative and judicial findings had been upheld by the Courts that the Communist Party is an organization which advocates the overthrow of the government by force and violence, it held that no constitutional rights of petitioner were violated by the omission of any finding in the instant proceeding that the Communist Party did so advocate. It disposed of the contention that Section 22 of the Act is a bill of attainder on the authority of cases holding that deportation is not punishment.

With respect to the question of affiliation, it held that the findings of the Hearing Officer and the Assistant Commissioner and the finding of affiliation were supported primarily on the basis of petitioner's sworn statement that he had contributed money annually to the Communist Party from 1930 up to the year of his arrest, and cited as authority the fact that Congress for more than thirty years has declared that the giving of money by aliens to certain proscribed organizations constitutes their "affiliation" with such organizations. Although the Court referred to the Act of 1920, 41 Stat. 1008, which contains a clause making rebuttable the presumption that the giving of money constitutes affiliation, it also cited the Internal Security Act of 1950, 64 Stat. 990, Section 3(17) which makes the giving of money a conclusive presumption of affiliation and must have relied thereon since the only charge and finding in the case is under the latter statute. The Court also held that the giving of money, together with all the other evidence in the record supports the finding of affiliation. The evidence in the record, other than that relating to the giving of money, which the Court held substantiated the findings of the Hearing Officer and the Assistant Commissioner was that peti-

tioner subscribes to the "Daily Worker" and is aware that it is a Communist paper; each week he pays for and receives five copies of the "Sunday Worker", a Communist Party publication and he distributes these copies in the neighborhood; he is sympathetic to the Communist Party and has distributed their literature. The Court further held that Section 22 of the Act, with respect to affiliation, requires no proof of knowledge, intent of wrong, or belief in the illegitimate ends of the Communist Party.

Specification of Errors

1. The conclusion that petitioner was affiliated with the Communist Party within the meaning of the deportation statute is arbitrary, without support in the evidence, and based on a conclusive presumption which is itself a denial of due process. The order for his deportation on the basis of such a conclusion is therefore unauthorized by the Act and in violation of due process guarantee of the Constitution.

2. The statute as here interpreted to provide for deportation on the basis of affiliation with the Communist Party, regardless of whether the affiliation is, as here, innocent of knowledge or intent of wrong, or proscribed activities of the Communist Party, is not reasonably related to the constitutionally permissible objective of the deportation power and penalizes innocent as well as knowing affiliation.

3. The provision for deportation of persons who have been affiliated with the Communist Party violates the due process guarantee of the Constitution in that it substitutes legislative fiat for the fair hearing insured by this guarantee.

4. The statute as here interpreted violates the Constitutional prohibition of bills of attainder and *ex post facto* laws.

Reasons for Granting the Writ

1. The conclusive presumption in Section 3 (17) of the Internal Security Act of 1950 that the giving of money or support to any organization for any purpose constitutes affiliation, warranting the deportation of the alien under Section 22 of that Act, is an unconstitutional deprivation of fundamental rights, fraught with danger, not only to aliens who at any time in the past thirty years for any purpose may have given money or support to the Communist Party or to an organization, which in turn gave money or support to the Communist Party, but to citizens as well for the same type of activities. For if the presumption is held to be conclusive here, it can be made valid in all legislation, and thus immeasurably increase the numerous and growing disabilities visited upon citizens with respect to passports, employment in government agencies, and defense plants, enlistment and commissions in the armed forces, appearances before Congressional investigating committeess, and all the areas of modern life over which the government increasingly exercises direct or indirect control. In its impact on aliens alone, its effect is far more widespread than the membership provisions of the deportation statutes which have raised questions of sufficient importance to warrant the grant of certiorari. See *Heikilla* v. *Barber,* 345 U. S. 229; *Haraisaides* v. *Shaughnessy, supra; Galvan* v. *Press,* No. 407, this Term. Assuming, on the basis of F. B. I. figures, that there are approximately 700,000 past and an additional 50,000 present members of the Communist Party in this Country,[1] it is a fact of history that there are many more persons who in the past thirty years have, at one time or another, intermittently or repeatedly, for longer or shorter periods and for lawful as well as proscribed pur-

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[1] Ernst and Loth. Report on the American Communist (1952) p. 14.

poses, given money or support to the Communist Party, or to an organization which in turn gave money or support to the Communist Party. Among these thus conclusively presumed to be affiliated with the Communist Party are unquestionably vast numbers of aliens, who are hereby subject to deportation under the Internal Security Act of 1950 regardless of the purpose for which they made their gift or gave their support.

2. The constitutional vice of such a conclusive presumption is that it denies due process, as this Court has repeatedly held. *Heiner* v. *Donnan*, 285 U. S. 312, *Schlessinger* v. *Wisconsin*, 270 U. S. 230, *Bailey* v. *Alabama*, 219 U. S. 219, *Manley* v. *Georgia*, 279 U. S. 1, *Western A. R. Co.* v. *Henderson*, 279 U. S. 639 "A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause . . ." *Manley* v. *Georgia, supra.* The legislature cannot constitutionally make one fact conclusive evidence of another material fact in controversy, if the former is not in and of itself by virtue of its own force conclusive. See *Heiner* v. *Donnan, supra.* And the fact of giving money or support to an organization is not in itself conclusive of affiliation. In *Bridges* v. *Wixon*, 326 U. S. 143, this Court defined affiliation as employed in the earlier statute,[2] which contained a rebuttable and not a conclusive presumption, as requiring a course of conduct implying a continuous relationship between the individual and the proscribed organization, where the conduct must create a dependable relationship on which the organization

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[2] See 40 Stat. 1012, 41 Stat. 1008, 1009, 54 Stat. 1008, 673, 8 U.S.C. § 137 (f):

"For the purpose of this section, . . . (2) the giving, loaning or promising of money or anything of value to any organization, association, society or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of . . . affiliation".

can rely, and the acts proved must evidence a working alliance to bring the proscribed views to fruition. See *U. S. ex rel.* v. *Kettunen* v. *Reimer*, 79 F. 2d 315 (C.C.A. 2). And in the *Bridges* case, despite the definition of § 137 f(2), and the evidence which met the definition, the Court held that affiliation was not proved. The conclusive presumption of Section 3(17) of the present statute is an *a fortiori* case, since it operates as a rule of law to deny a fair opportunity to repel it, and to establish the proof of non-affiliation under the tests approved in *Bridges*. The conclusive presumption created by the statute is invalid whether it treated as a rule of evidence or of substantive law. See *Heiner* v. *Donnan, supra*.[3] Additionally, Section (3)(17) is void for vagueness and violative of due process for that reason. See Frankfurter, J., "as to the dubious scope of the term 'affiliated' in the *Bridges* statute. *A. C. A.* v. *Douds*, 339 U. S. 382, 420; *Musser* v. *Utah*, 333 U. S. 95; *Winters* v. *New York*, 333 U. S. 507.

3. The finding of affiliation in this case is based on the

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[3] Significantly, Section 3(17) of the Internal Security Act of 1950 was amended in the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 172) to eliminate the conclusiveness of the presumption but in certain respects only. Section 101(e)(2) of Title I of the latter Act provides "The giving, loaning or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation." The only respects in which this presumption may be rebutted, according to the framers of the legislation, is by showing that the affiliation was involuntary, not, as in *Bridges* v. *Wixon, supra* that the affiliation was for lawful and not proscribed activities. Thus, Senate Report No. 1137 (to accompany S.2550) 82 Cong. 2d Sess. (p. 6) states: It is to be noted that the definition of affiliation contained in Section 101(e)(2) has been modified by making the presumption prima facie only rather than conclusive. While the giving, loaning or promising of support or of any money or any other thing of value for any purpose shall result only in a rebuttable presumption of affiliation therewith under the applicable provisions of this bill, that presumption of affiliation can only be overcome under the substantive provisions of Section 212 (A) 28 I or Section 313 (d) relating to the voluntary or involuntary character of such affiliation.

conclusive presumption of the statute. Each finding of the Hearing Officer (R. 84-85) and of the Assistant Commissioner (R. 92) relates to the giving of money to the Communist Party. Disregarded is the undisputed evidence that the alien never advocated the violent and physical overthrow of organized government (R. 72), never belonged to and never was asked to join the Communist Party (R. 32, 39, 72; 74, 75); was sympathetic to the Communist Party, because they organized the workers into unions to improve conditions (R. 75), never took his complaints or grievances to the Communist Party, but instead went to the Amalgamated Clothing Workers, the Union of which he was a member and which he thought was not a Communist union. (R. 74-76). The District Court held that the findings of the Hearing Officer were adequately supported by the facts and "there can be no doubt whatsoever that petitioner is affiliated with the Communist Party and has been affiliated with the Communist Party since 1930" (R. 12). The reference to the findings of the Hearing Officer, and particularly the reference to 1930 make it clear that it is the giving of money which is the basis of the finding of affiliation. The Court of Appeals of course specifically referred to the presumption of Section 3(17) (See footnote 7, page 8 of Opinion) and to the statement in *Bridges* "He who renders financial assistance to any organization may generally be said to approve of its objectives or aims. (Opinion, p. 9). Its omission to quote the subsequent language from the *Bridges* opinion which defined affiliation not to include the kind of activity involved in that, as well as in the instant case, is an indication that the Court below, like the Hearing Officer and the Assistant Commissioner, took the presumption as conclusive, so that the evidence in the record which repels the presumption and which would have taken petitioner outside the definition

of affiliation was not considered. It is true that the Court found that petitioner was sympathetic to the Communist Party, and the only testimony in the record on this is that he was sympathetic "because they organize the workers. In every union they organize the workers to improve conditions. (R. 75.) But affiliation "imparts less than membership but more than sympathy . . . he who cooperates with such an organization only in its wholly lawful activities cannot by that fact said as a matter of law to be affiliated with it." *Bridges, supra* at 143. Here, the record is barren of any evidence of any unlawful activity by petitioner with respect to the affiliation or of any cooperation by the petitioner with the Communist Party in any proscribed activity. There is no evidence as to the contents of the "Sunday Worker" which he bought and gave away "All the time I read the 'Sunday Worker' and people ask me why I read it I say to them if you want one I will bring it to you. That's why I get five copies. I give them away. I pay ten cents for them each. If they want to pay the ten cents I take it. If not, I give it to them." (R. 73-74.) There is no evidence as to any illegal purpose for which petitioner contributed the money, and his own statement of sympathy for the Communist Party was based on lawful objectives. (R. 75-76.) It is clear, therefore, that the presumption operated to compel the finding of affiliation regardless of the evidence of non-affiliation which would have been sufficient under the *Bridges* test. See *U. S.* v. *Reimer* 79 F 2d 315. Thus the order of deportation is void because without support in the evidence. *Tisi* v. *Tod* 264 U. S. 131, 133, *Vatjaner* v. *Commissioner* 273 U. S. 103, 106 and because, as in the *Bridges* case, the alien is ordered deported for reasons not specified by Congress, in that the finding of affiliation was based on too loose a meaning of the term 326 U. S. at 149 or because the test employed by

Congress and sustained by the Court below as to affiliation was patently arbitrary.

4. "Affiliation" requires an awareness of the object of the affiliation so that there can be "a status of mutual recognition that he may be relied on to cooperate with the Communist Party on a fairly permanent basis." *Reimer, supra,* and "a working alliance to bring the proscribed program to fruition," *Bridges, supra.* Here, there is no evidence whatsoever as to any proscribed activity by the Communist Party, no evidence of any knowledge by the petitioner of any such activity, and no evidence of any wrong in connection with any act or contribution of money by petitioner to the Communist Party. The case was decided in the Court below on the basis that the government was not required to show such awareness or activity because *Harasaides, supra* relieved it of that burden. (Opinion p. 8-9).

But *Weiman* v. *Updegraff* 344 U. S. 183, rendered since *Harasaides,* raises the question of *scienter,* not considered in the earlier opinion. *Weiman* held unconstitutional as patently arbitrary a state statute providing that past membership in certain organizations disqualified a person for government employment, regardless of whether the member had knowledge of the purposes of the organizations. "Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power." (at 191). See also *Garner* v. *Los Angeles Board* 341 U. S. 716, *Adler* v. *Board of Education* 342 U. S. 485, 494-495; *Gerende* v. *Election Board,* 341 U. S. 56, 57. The statute, as here interpreted by the Court below, indiscriminately classifies innocent with knowing activity. Under it, petitioner is held to be affiliated and thus deportable, regardless of his knowledge, intent, awareness of illegitimate objects, or cooperation in lawful objectives. It is thus patently arbi-

trary, and not reasonably related to the constitutionally permissible objective of the deportation power.

5. The statute, as construed by the Court below, deprives the petitioner of any hearing, and relieves the government of the burden of any finding, with respect to the advocacy by the Communist Party of the overthrow of the government by force and violence. In *Harasaides,* such a finding was made and not questioned. In *Heikkila* v. *Barker, supra,* and *Martinez* v. *Neely* 344 U. S. 916, the question was briefed but not decided. In *Galvan* v. *Press* No. 407, this Term, the question has been raised and argued with respect to past membership, but not yet decided. The present case raises the question with respect to affiliation, and, for reasons already mentioned, is of at least as great constitutional and national importance as the question of membership. In the case of affiliation, the alien is not merely foreclosed by the conclusive presumption arising under Section 3(17); he is also foreclosed, as the Court below held, by what is in effect a conclusive presumption under Section 22 that his affiliation with the Communist Party was solely in connection with its illegitimate objects. This is subject to the same constitutional infirmity as the conclusive presumption of Section 3(17). See *Heiner* v. *Donnan, supra.* See also *Joint Anti-Fascist Committee* v. *McGrath* 341 U. S. 123, *Wong Sung* v. *McGrath,* 339 U. S. 33.

6. This case raises squarely the question of the bill of attainder and *ex post facto* clauses of Article I, Section 9, clause 3 of the Constitution, in connection with Section 22 of the Internal Security Act of 1950. These questions were not specifically raised by the petition in *Galvan* v. *Press supra,* although briefed and argued, and therefore may not be decided in that case. But see *Garcia* v. *Landon* No. 279 Misc. also involving the validity of Section 22 of the Internal Security Act of 1950. That deportation is considered

a civil rather than a criminal sanction, and when legitimately imposed is not deemed punishment does not foreclose the question. Under all the cases, the question is open as to whether, in the statute here involved and the circumstances of this case, deportation is imposed, not as the reasonable objective of carrying out the power of Congress to rid the country of undesirable aliens, but as a punishment for lawful, constitutionally protected, although, unpopular, acts. The question is of constitutional and national importance and should be decided by this Court.

Conclusion

For the foregoing reasons, it is respectfully urged that a Writ of Certiorari be granted.

ALLAN R. ROSENBERG,
Attorney for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 668

GIACOMO QUATTRONE, PETITIONER

v.

HENRY NICOLLS, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 102-111) is reported at 210 F. 2d 513.

JURISDICTION

The judgment of the Court of Appeals was entered on February 19, 1954 (R. 111). The petition for a writ of certiorari was filed on April 1, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence supports the administrative finding that petitioner was "affiliated" with the Communist Party.

2. Whether petitioner was deprived of due process of law by Section 3 (17) of the Internal Security Act of 1950, making the giving of support or money to an organization a conclusive presumption of affiliation.

3. Whether Section 22 of the Internal Security Act of 1950 authorizes deportation without requiring any finding of the purposes of the Communist Party or of the alien's knowledge of those purposes, and, if so, whether the statute is valid.

4. Whether Section 22 of the Internal Security Act of 1950 constitutes a bill of attainder or *ex post facto* law in violation of Article I, Section 9, Clause 3 of the Constitution.

5. Whether Section 22 of the Internal Security Act of 1950 imposes, without reasonable justification, restraints on petitioner's rights under the First Amendment.

STATUTES INVOLVED

Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, 8 U. S. C. (Supp. V) 137, amends the Act of October 16, 1918, to provide:

> Sec. 1. That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *;

* * * * *

Sec. 4. (a) [8 U. S. C. (Supp. V) 137-3(a)] Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated [above] * * * shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

Section 3 (17) of the Internal Security Act, 50 U. S. C. (Supp. V) 782 (17), provides that:

The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be conclusively presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

STATEMENT

Petitioner, Giacomo Quattrone, legally entered the United States from Italy in 1906 as a permanent resident and has continuously resided in this country ever since (R. 2, 7). In January 1950, he was arrested on a warrant charging that he was in the United States in violation of the Act of October 16, 1918, as amended, in that he was, after entry, "* * * affiliated with an organization, association, society, and group that advises, advocates, and teaches the overthrow by force and violence of the Government of the United States" and that he was, after entry, "* * * affiliated with an organization, association, society, and group that writes, circulates, distributes, prints, publishes, and displays any written and printed matter advising, advocating and teaching the overthrow, by force and violence, of the Government of the United States" (R. 59-60).

On January 25, 1951, a deportation hearing on these charges was held before the Immigration and Naturalization Service (R. 13-45), at the conclusion of which the additional charge was lodged against the petitioner that he was deportable as "an alien who is affiliated with the Communist Party of the United States" (R. 43). The hearing was then adjourned to February 13, 1951, to allow the petitioner additional time to meet the newly-lodged charge, at which time petitioner presented some evidence (R. 45-59).

The principal evidence against the petitioner introduced at the deportation hearing was two transcriptions of interviews with petitioner by an ex-

amining officer of the Immigration and Naturalization Service, which petitioner had previously read and signed (R. 67-81). Those transcripts showed (1) that petitioner received five copies of the Sunday Worker every week which he distributed, sometimes for 10 cents, sometimes for nothing, depending on the wishes of the recipients (R. 73-74); (2) that he was "sympathetic" to the Communist Party because "they organize the workers" (R. 75); (3) that he had distributed circulars for the Party "to organize the people" (R. 75); (4) that he contributed money to the Party at its public meetings whenever collections came up, if he had money at such times (R. 77), and that he had made some contribution at least once every year since 1930 (R. 80-81); and (5) that he collected money for the Party which he turned in at the Party's Boston office (R. 77), that he had done this more than once, and that he had done it at the request of the Communist Party office (R. 78-79).

On January 15, 1951, the Hearing Officer rendered his decision and ordered that petitioner be deported on the ground that he had been, after entry, affiliated with the Communist Party (R. 83-85). On August 13, 1951, the decision and order of the Hearing Officer were affirmed by the Assistant Commissioner, Adjudications Division, Immigration and Naturalization Service (R. 91-97), who adopted the findings of the Hearing Officer, and stated, *inter alia,* that (R. 93-94):

> The record in the instant proceedings establish that respondent is an alien, that his only entry into this country occurred on December

30, 1906, that he is sympathetic to the aims of the Communist Party of the United States, that he subscribes to, and distributes, literature of that organization; and that he attends Party meetings. The record further establishes that respondent has collected contributions for the Communist Party, and that he has made personal contributions to this organization regularly since 1930.

The foregoing facts make it clear that respondent was, after his entry into this country, in sympathy with the aims of the Communist Party of the United States. The record establishes that he was not willing merely to aid this organization in a casual intermittent way, but that respondent has so conducted himself as to have brought about a status of mutual recognition that he might be relied upon to cooperate with the Communist Party of the United States on a permanent basis. Accordingly, we find that "affiliation" has been definitely established, and that respondent is thereby deportable under the Act of October 16, 1918, as amended.

An appeal from the Commissioner's decision was dismissed by the Board of Immigration Appeals on April 11, 1952, on the ground that "the Assistant Commissioner's decision is correct" (R. 97-98). A warrant of deportation was thereafter issued and served on petitioner on January 12, 1953, pursuant to which he was taken into custody and has since been held without bail (R. 2-3).

On January 15, 1953, petitioner filed an applica-

tion for a writ of habeas corpus (R. 1-6), challenging the qualifications of the Hearing Officer (who did not meet the standards required by the Administrative Procedure Act), and of the Examining Officer (who had earlier investigated the petitioner's case and had taken the statements which were the principal basis of the Government's case). He also challenged the sufficiency of the proof, the fact that the deportation order was based on a charge different from that which was the basis for the arrest, and the validity of the Internal Security Law of 1950, which, he said, "violated his rights of freedom of speech, press and assembly and is, in effect, a bill of attainder, and further * * * [a denial of] due process" (R. 5). After the Government's return and hearing, the application for habeas corpus was denied on February 19, 1953 (R. 11). The Court of Appeals, on February 19, 1954, unanimously affirmed (R. 111).

ARGUMENT

1. Petitioner contends that the order of deportation is invalid because there was insufficient evidence that he was "affiliated" with the Communist Party, and because the finding that he was affiliated was based on a conclusive presumption from the fact that he had made contributions to the Party, a presumption said to be a denial of due process. Petitioner does not argue that Congress could not, in the present circumstances, make an alien's affiliation with a party advocating the forceful and violent overthrow of the Government a basis for deportation. He assumes that it could, and argues instead

that the Congress cannot make financial support conclusive of affiliation.

But it is not necessary to reach this argument in the present case. The Internal Security Act of 1950 does make contributions to the Party a conclusive presumption of affiliation, but it also states, explicitly, that this should not be the only way to show affiliation (see p. 3, *supra*). Not only does the record here show additional evidence of affiliation, but it is also clear that the Commissioner of Immigration relied on this additional evidence, not merely on the statutory presumption.

As we have pointed out, (*supra*, pp. 4-5), the evidence shows that petitioner made contributions to the Communist Party, that he made them whenever requests were made which he could afford to meet, and that he had done this regularly since 1930. The evidence also shows that he had regularly distributed copies of the Sunday Worker, which he paid for himself but for which he did not demand payment. He likewise collected money which he turned in to the Party office in Boston; he had done this on more than one occasion, and had done it at the request of the Party. He also distributed Party circulars. And he testified that he is "sympathetic" to the Party and subscribes to the Daily Worker. The Commissioner of Immigration, after reviewing the facts, stated that (R. 94):

> The foregoing facts make it clear that respondent was, after his entry into this country, in sympathy with the aims of the Communist Party of the United States. The record establishes that he was not willing merely to aid this

> organization in a casual intermittent way, but that respondent has so conducted himself as to have brought about a status of mutual recognition that he might be relied upon to cooperate with the Communist Party of the United States on a permanent basis. * * *

This showing suffices to show affiliation under the test of *Bridges* v. *Wixon*, 326 U. S. 135, 141-149. There, the Court quoted with approval (at p. 142) the language of *United States* v. *Reimer*, 79 F. 2d 315, 317 (C.A. 2), that affiliation was not proved "unless the alien is shown to have so conducted himself that he has brought about a status of mutual recognition that he may be relied on to co-operate with the Communist Party on a fairly permanent basis." The Commissioner found that that is petitioner's situation.

Bridges v. *Wixon*, *supra*, at p. 143, goes on to say that affiliation—

> imports, however, less than membership but more than sympathy. By the terms of the statute it includes those who contribute money or anything of value to an organization * * *. That example throws light on the meaning of the term "affiliation". He who renders financial assistance to any organization may generally be said to approve of its objectives or aims.

The Court distinguished between such financial support of an organization and cooperation for the attainment of limited lawful objectives, even for long periods. The test is whether the support of the organization represents an indiscriminate un-

derwriting of all its activities, lawful or unlawful, or merely a cooperative venture in one of the Party's lawful activities which may be of special interest to the alien.

This petitioner's support of the Communist Party, as shown by the record, goes beyond occasional contributions, and is not restricted to support for limited purposes. His connection with, and support of, the Party has been long-continued and his patronage active. The statutory test of mutual recognition and responsibility was applied by the administrators and has adequate support in the record.

Although, as we have said, the issue is not present in this case whether Congress may constitutionally deport aliens who have knowingly given financial support to the Communist Party, that issue, if present, would in all probability be resolved in favor of validity, under *Harisiades* v. *Shaughnessy,* 342 U. S. 580, and *Bridges* v. *Wixon,* 326 U. S. 135, 143. For *Harisiades* makes clear the broad scope of Congressional power over the deportation of aliens; and the quotation from the *Bridges* decision set forth above suggests this Court's recognition of the reasonableness of using financial support of the Party as a test. It should also be noted that the "conclusive presumption" language of the 1950 Act has been dropped in Section 101 (e) (2) of the Immigration and Nationality Act of 1952 (66 Stat. 163, 172; 8 U. S. C. A. 1101 (e) (2)). The pertinent section now provides that: "The giving, loaning, or promising of support or of money or any other

thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation." The petitioner's request for review of the 1950 Act, therefore, would seem to require consideration of a repealed provision of only passing interest in a case which does not squarely concern the disputed aspect of the statute.

2. Petitioner's remaining contentions are (a) that Section 22 of the Internal Security Act of 1950 should be read to require (i) a finding of the evil purposes of the Communist Party during the period of petitioner's affiliation, (ii) a showing that petitioner knew of such activity and (iii) a showing that he believed in the illegal purposes attributed to the Party; (b) that Section 22, if not so construed, is invalid; (c) that Section 22 is a bill of attainder and an *ex post facto* law; and (d) that Section 22 imposes restraints, without reasonable justification, on petitioner's rights under the First Amendment.

All of these questions are dealt with in the brief and supplemental memorandum for the Government in *Galvan* v. *Press,* No. 407, O. T. 1953, in relation to similar claims by an alien found deportable because of past membership in the Communist Party. That discussion is equally applicable to an alien found to be currently affiliated with the Party (see R. 92). See also *Carlson* v. *Landon,* 342 U. S. 524, 535-6.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
JOHN R. WILKINS,
Attorneys.

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